

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The September 27, 2001 preliminary hearing Order for Compensation should be affirmed.
2. Respondent employed claimant as a hay foreman and assistant manager. On approximately May 23, 2001, while driving on one of respondent's farm roads, claimant hit a dip in the road and snapped his back. Claimant described the accident as follows:

We was headed to go bale hay on a quarter, and going down a road, on a farm road that's farm maintained, and it was real rough and sandy, and I hit a dip -- or come over a hill and up and down, and it snapped my back.¹

Claimant's description of the accident is consistent with the initial history recorded on the day of the accident by Wichita's Via Christi Regional Medical Center. That history indicates claimant was riding in a car earlier in the day and hit a pothole, causing the immediate onset of back pain and weakness in the right lower extremity followed by weakness in the left lower extremity.

3. The accident caused a severe burst compression fracture at the first lumbar vertebra. An ambulance was summoned, which took claimant to a Garden City hospital emergency room. Claimant was later flown to Wichita by Life Watch.
4. Claimant received back surgery from Dr. Jacob Amrani and later began seeing Dr. Kevin Rieg, a physical medicine and rehabilitation specialist. Since the accident, claimant has also seen Wichita's Dr. Timothy S. Shaver and Dr. C. Reiff Brown.
5. Before the accident, claimant had intermittent pain in his upper and lower back. But those symptoms never prevented claimant from working either at home or at work. Conversely, after the accident claimant is unable to work and has no control of his bowel, bladder or feet, and has severe pain in his feet and is totally dependent on a walker and braces to walk.
6. Dr. Rieg wrote claimant's attorney on August 8, 2001, providing an opinion of the cause of claimant's compression fracture. According to Dr. Rieg, claimant sustained an accidental injury while driving on the rough farm road. The doctor wrote, in part:

In regards to Mr. O'Hanlon, from the records I reviewed and the patient's account, he had an injury that occurred while he was riding on a rough dirt road in his car and hit a pothole or stepped on the brake suddenly, which caused immediate pain and leg weakness and, later, sensory deficits. When

¹ Preliminary Hearing transcript, September 12, 2001; at 6.

he arrived at the hospital he was found to have an L1 burst fracture. Based on his history and records, it is my opinion that the incident in the car caused the L1 burst fracture and subsequent incomplete paraplegia. . .

7. At his attorney's request, claimant saw board-certified orthopedic surgeon C. Reiff Brown, M.D., for an evaluation. In an August 7, 2001 letter to claimant's attorney, Dr. Brown indicated that the May 23, 2001 accident caused claimant's compression fracture rather than any possible preexisting spondylitis or arthritis. The doctor wrote, in part:

. . . In my opinion the injuries that this man [claimant] sustained were totally due to the accident that occurred on May 23, 2001. I cannot blame his present condition or this injury on any possible pre-existing rheumatoid spondylitic or arthritic difficulty. Rheumatoid spondylitis and rheumatoid arthritis simply do not cause sudden burst type fractures with paraplegia. Such injuries require axial forces to be applied to the spine (sudden forces applied to the top of the head or to the buttocks in a seated position or a sudden forward flexion of the spine which frequently occurs as such axial forces are applied). We can assume with reasonable medical certainty that the described accident when the pick-up went over the bump caused this man's injuries.

8. Dr. Shaver, who is with the Arthritis and Rheumatology Clinics of Kansas, wrote claimant's attorney on September 7, 2001, and advised that claimant's preexisting arthritic condition was insufficient to account for claimant's compression fracture and that trauma was the more likely cause. The doctor wrote:

. . . while I assumed his care at a rather late date, there is certainly compelling information that he sustained a very sudden injury while decelerating in his motor vehicle and coming to a stop on a rough dirt road. Per the available records, this accident occurred on May 23, 2001. It is my opinion, along with other physicians seeing Mr. O'Hanlon, that this injury was the direct cause of his compression fracture at L1 and subsequent compression of the lumbar spine resulting in paraplegia. Incidentally, Mr. O'Hanlon does have what appears to represent ankylosing spondylitis, an inflammatory arthritis condition, but also has gone through bone density testing which demonstrated relatively normal bone mass. It is my opinion that Mr. O'Hanlon's medical condition alone is insufficient to account for his injury and that the above stated trauma was more likely the direct result [sic].

9. Respondent and its insurance carrier argue that claimant's accidental injury is not compensable because it allegedly resulted from a personal risk. They also argue that there is no causal connection between claimant's injury and his work. The Board disagrees. Considering the record compiled to date, the Board concludes that claimant's accident is compensable under the Workers Compensation Act as the evidence establishes a direct connection between claimant's job duties and the accident and resulting injury.

10. Before an accidental injury is compensable under the Act, the accident must arise out of and occur in the course of employment.

If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.²

11. Accidents arise out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Accordingly, an injury arises out of employment if it arises out of the nature, conditions, obligations, or incidents of the employment.³

12. The greater weight of the medical evidence indicates that claimant's compression fracture was caused by trauma to the back. The record also establishes that claimant sustained that trauma while driving on one of respondent's farm roads, which was an activity required by the nature, conditions, obligations and incidents of claimant's employment. The accident did not occur while claimant was driving for personal pleasure or while coming or going to work. Instead, the accident occurred as claimant was working and driving to a field to bale hay. Therefore, there is a direct causal connection between the accident and claimant's work duties.

WHEREFORE, the Board affirms the September 27, 2001 Order for Compensation entered by Judge Fuller.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
James M. McVay, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

² K.S.A. 44-501(a).

³ *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).